

No. 85-5221

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Supreme Court, U.S.
FILED
JUL 17 1986
JOSEPH F. SPANIOL, JR.
CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1986

RANDALL LAMONT GRIFFITH, PETITIONER

v.

COMMONWEALTH OF KENTUCKY, RESPONDENT

**ON WRIT OF CERTIORARI TO THE
SUPREME COURT OF KENTUCKY**

JOINT APPENDIX

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**PETITION FOR CERTIORARI FILED AUGUST 9, 1985
CERTIORARI GRANTED JUNE 2, 1986**

2180
564

INDEX

<i>ITEM</i>	<i>Page</i>
Chronological List of Relevant Docket Entries	1
Transcript of Record of Jefferson Circuit Court:	
Indictment No. 82-CR-1449-9	2
Juror List	4
Juror Strike Sheet	5
Final Judgment	7
Notice of Appeal	8
Partial Transcript of Voir Dire Held in Jefferson Circuit Court on May 15, 1984	10
Opinion of Kentucky Supreme Court, filed June 13, 1985	17
Order of the Supreme Court of the United States granting certiorari and Leave to proceed in forma pauperis, June 2, 1986	19

**CHRONOLOGICAL LIST OF
RELEVANT DOCKET ENTRIES**

DATE	DOCKET ITEM
September 27, 1982	Defendant Randall Lamont Griffith was indicted in Jefferson Circuit Court for first-degree robbery, theft by unlawful taking of the value of less than \$100 and persistent felony offender in the second degree.
May 15, 1984	The jury was selected after each side exercised their peremptory challenges.
May 21, 1984	Defendant Randall Lamont Griffith was convicted in Jefferson Circuit Court of robbery in the first degree and second degree persistent felony offender; defendant Griffith was sentenced to twenty years of imprisonment.
May 24, 1984	Notice of Appeal filed in Jefferson Circuit Court by defendant.
June 13, 1985	Kentucky Supreme Court affirmed defendant's conviction.

THE COMMONWEALTH OF KENTUCKY
JEFFERSON CIRCUIT COURT
CRIMINAL DIVISION

September Term A. D., 1982

82CR1449-9

THE COMMONWEALTH OF KENTUCKY

Against

RANDALL LAMONT GRIFFITH
315 Poplar Level Road

ROBBERY I

KRS 515.020 Class B Felony
10 to 20 years

THEFT BY UNLAWFUL TAKING UNDER \$100

KRS 514.030 Class A Misdemeanor
Up to 12 months &/or Up to \$500

PERSISTENT FELONY OFFENDER II
KRS 532.080 Indeterminate

[INDICTMENT]

The Grand Jurors of the County of Jefferson, in the name and by the authority of the Commonwealth of Kentucky, charge:

COUNT ONE

That on or about the 8th day of September, 1982, in Jefferson County, Kentucky, the above named defendant, Randall Lamont Griffith, committed first-degree robbery by threatening the use of physical force upon Ms. Collette

Ruhl, while armed with a ice pick, a dangerous weapon, and in the course of committing a theft at 5057 Poplar Level Road.

COUNT TWO

That on or about the 8th day of September, 1982, in Jefferson County, Kentucky, the above named defendant, Randall Lamont Griffith, committed theft by unlawfully taking or exercising control over a purse, of the value of less than \$100, belonging to Ms. Deborah K. Barnett, with the intent to deprive her thereof.

COUNT THREE

Further, the Defendant, Randall Lamont Griffith, who is more than twenty-one years of age, has previously been convicted for the following prior felony and is now charged as being a Persistent Felony Offender in the Second-Degree as follows:

(1) That on or about the 1st day of July, 1980, in Jefferson County, Kentucky, the above named defendant, Randall Lamont Griffith, appeared in the Jefferson Circuit Court, Jefferson County, Kentucky, a court of general criminal jurisdiction, pursuant to Indictment No. 80CR0272, charging him with Receiving Stolen Property Over \$100, a felony, in violation of the Kentucky Revised Statutes; and said court convicted and sentenced the defendant, Randall Lamont Griffith, to two years withheld for five years.

AGAINST THE PEACE AND DIGNITY OF THE
COMMONWEALTH OF KENTUCKY.

A TRUE BILL

/s/ Henry L. Masterson
FOREPERSON

Det. D. Crady, 6122, JCPD.

JEFFERSON CIRCUIT COURT
NINTH DIVISION

5-15-84

82CR1449

COM'L.—JOE GUTMANN

vs

RANDALL L. GRIFFITH—LEO SMITH

[JUROR LIST]

Jurors

1. Douglas Edwards #106
2. Steven Nelson #68
3. Gloria Smithson #169
4. Thomas Hanks #111
5. Patricia Freeman #75
6. Rhonda Engler #28
7. Marvin Sparks #110 excused
8. Douglas Heil #158
9. Peggy Smith #137
10. John Stiles #117
11. Otto Harrison #151
12. Robert Kaufman #77
13. Thurston Sullivan #191

82CR1449

5/15/84

COMMONWEALTH OF KENTUCKY
COUNSEL FOR COMMONWEALTH

DEFENDANT(S) Joe Metzman
Randolph Ramsey Huffeth
COUNSEL FOR DEFENDANT(S) Leo Smith

NAMES OF JURORS IMPANELED

STRICKEN BY WHOM

BOX OF JUROR

1. <u>Thomas Cooky #48</u>	<u>Douglas Edwards #106</u>	
2. <u>Steven Nelson #108</u>	<u>Dpt</u>	<u>1</u>
3. <u>Patricia Freeman #75</u>	<u>Dpt</u>	<u>2</u>
4. <u>Mary Miller #186</u>	<u>Dpt</u>	<u>3</u>
5. <u>Oral Moore #34</u>	<u>Dpt</u>	<u>4</u>
6. <u>Robert Harris #202</u>	<u>Comil</u>	<u>5</u>
7. <u>Gloria Smithson #169</u>		<u>6</u>
8. <u>Thomas Banks #111</u>		<u>7</u>
9. <u>Patricia Freeman #75</u>		<u>8</u>
10. <u>Chanda Engler #28</u>		<u>9</u>
11. <u>Marina Sparks #110</u>		<u>10</u>
12. <u>Douglas Neil #158</u>		<u>11</u>
13. <u>Charles Mattingly #168</u>	<u>Dpt</u>	<u>12</u>
14. <u>William Porter #210</u>	<u>Comil</u>	<u>13</u>
15. <u>Richard Albright #21</u>	<u>Dpt</u>	<u>14</u>
16. <u>Reese Smith #137</u>	<u>Dpt</u>	<u>15</u>
17. <u>Robert Black #160</u>	<u>Dpt</u>	<u>16</u>
18. <u>John Stiles #117</u>	<u>Comil</u>	<u>17</u>
19. <u>Harold Harlan #53</u>	<u>Comil</u>	<u>18</u>
20. <u>Otto Harwood #151</u>	<u>Comil</u>	<u>19</u>
21. <u>Richard Harwood #86</u>	<u>Comil</u>	<u>20</u>
22. <u>Robert Kaufman #77</u>	<u>Comil</u>	<u>21</u>
23. <u>Thurston Sullivan #191</u>	<u>Comil</u>	<u>22</u>
24. <u>Gerard Lube #190</u>	<u>Comil</u>	<u>23</u>
25. <u>Harold Harlan #204</u>	<u>Comil</u>	<u>24</u>
26. <u>Phil Robinson Jr. #18</u>	<u>Comil</u>	<u>25</u>
27. <u>Charles Sullivan #177</u>	<u>Dpt</u>	<u>26</u>
28. <u>Thelma Smith #211</u>		<u>27</u>
29.		<u>28</u>
30.		<u>29</u>
31.		<u>30</u>
32.		<u>31</u>

[JUROR STRIKE LIST]

JEFFERSON CIRCUIT COURT
NINTH DIVISION

JUDGE KEN G. COREY

No. 82CR1449

COMMONWEATH OF KENTUCKY, PLAINTIFF

vs

RANDALL LAMONT GRIFFITH, DEFENDANT

JUDGMENT AFTER JURY TRIAL

The defendant at arraignment having entered a plea of not guilty to the following charges included within the indictment, Count 1, Robbery I, Count 2, T.B.U.T. U/ 100.00, dismissed; Count 3, P.F.O. II and having on the 15th day of May, 1984, appeared in open court with his attorney Honorable Leo Smith, the case was tried before a jury which returned the following verdict: *VERDICTS UNDER INSTRUCTION NO. 1, ROBBERY IN THE FIRST DEGREE: WE, THE JURY, FIND THE DEFENDANT, RANDALL LAMONT GRIFFITH, GUILTY UNDER INSTRUCTION NO. 1, AND FIX HIS PUNISHMENT AT CONFINEMENT IN THE PENITENTIARY FOR TEN YEARS. /S/ STEVEN L. NELSON, FOREPERSON.*

After the jury returned their verdict of guilt, the second phase of the trial began; the defendant being charged as a P.F.O. II. Evidence was heard and the jury returned the following verdict: *VERDICTS UNDER INSTRUCTION NO. 1 PERSISTENT FELONY OFFENDER IN THE SECOND DEGREE: WE, THE JURY, FIND*

THE DEFENDANT, RANDALL LAMONT GRIFFITH, GUILTY UNDER INSTRUCTION NO. 1, and fix his punishment at confinement in the penitentiary for Twenty Years, *in lieu of* our previous recommendation. /S/ STEVEN L. NELSON, FOREPERSON.

Pursuant to KRS. 532.052, the court, having explained the defendant's right to a presentence investigation report, the defendant, in person and by counsel, expressly waived such right and requested that the Court proceed with sentencing immediately.

No sufficient cause having been shown why judgment should not be pronounced, IT IS HEREBY ORDERED AND ADJUDGED BY THE COURT that the defendant is guilty of the following charges: COUNT 1, ROBBERY I, COUNT 3, P.F.O. II and is Sentenced to 10 Years on Count 1, enhanced to 20 Years on Count 3, for a total of 20 years in Bureau of Corrections.

IT IS FURTHER ORDERED that the defendant shall not be entitled to bail and that the sheriff of Jefferson County deliver the defendant to the custody of the Department of Corrections at such location within this Commonwealth as the Department shall designate.

IT IS FURTHER ORDERED THAT the defendant is hereby credited with time spent in custody prior to sentence, namely as many days as certified by the jailer of Jefferson County towards service of the maximum term of imprisonment.

/s/ Judge Ken G. Corey
JUDGE KEN G. COREY

ATTESTED: A TRUE COPY

PAULIE MILLER, Clerk

By /s/ Debbie Moore D.C.

CC: LEO SMITH
JOE GUTMANN

[ENTERED IN COURT May 21, 1984]

JEFFERSON CIRCUIT COURT
NINTH DIVISION

No. 82CR1449

COMMONWEALTH OF KENTUCKY, PLAINTIFF

v.

RANDALL LAMONT GRIFFITH, DEFENDANT

NOTICE OF APPEAL

Comes the appellant, Randall Lamont Griffith, by counsel, pursuant to RCr 12.04, and hereby gives notice to the Commonwealth of Kentucky, the appellee, of his intention to take an appeal to the Kentucky Supreme Court from the final judgment entered herein.

CERTIFICATE

This is to certify that a copy of the foregoing was delivered to Hon. Joseph Gutmann, Assistant Commonwealth's Attorney, or his agent, on May 24, 1984.

/s/ Frank W. Heft, Jr.
FRANK W. HEFT, JR.
Chief Appellate Defender of the
Jefferson District Public Defender
200 Civic Plaza
719 West Jefferson Street
Louisville, Kentucky 40202
(502) 587-3800
Counsel for Defendant

JEFFERSON CIRCUIT COURT
NINTH DIVISION

[EXCERPTS FROM TRANSCRIPT OF
VOIR DIRE MAY 15, 1984]

. . . .

[35] MR. SMITH: Judge, approach the bench while we're waiting on that, I think it will save some time, in order to save some time, I'll go ahead and bring this up now.

(WHEREUPON, the following discussion was had at the bench out of the hearing of the Jury:)

MR. SMITH: I have no idea what, in terms of race, the jury is going to consist of. If, by chance, we got an all white jury, I'm going to ask that the Court, before discharging the rest, put on the record as to whether or not Mr. Gutmann exercised his strikes as to whether or not the person was black and if so, I think case law gives me the right to have him state for the record the reasons and I'll bring that up now so I don't have to run up after the jury is selected.

MR. GUTMANN: Mr. Smith, I consider that very offensive.

MR. SMITH: Well, needless to say. . .

MR. GUTMANN: Judge, I want to take exception to that.

THE COURT: Okay.

MR. SMITH: I have no choice but to make [36] to make that objection.

THE COURT: Just tell me now, did you strike any member of the panel because of their race

MR. GUTMANN: No, I did not.

THE COURT: Okay. That's sufficient.

MR. SMITH: All I ask, we can wait and if we end up impaneling some blacks, there will be no issue. I have no idea, I simply ask for purposes of the record because it does not indicate race as to how many strikes that we simply list that, does that make sense?

THE COURT: No.

MR. GUTMANN: Mr. Smith, did you strike any whites because they are white?

MR. SMITH: As Mr. Gutmann is aware, this is not an unusual motion being made whether with him or any other prosecutor. Matter of fact, it's only recently, based on the fact that you end up often times with these all white juries and the defendants are very sensitive to that. Mr. Griffith, I think, is very sensitive to that and essentially wanted me to make this particular motion. I'm going to do it because I think I have to under case law and all I said, so the record is sufficient if it goes up on appeal, if we sit some blacks, there's not an issue, okay? And, we can forget about it. If we don't, all I ask is to have Mr. Gutmann state the reasons for the strike, if you seen them outside before, if you do, then it's not there in terms of appeal and I think case law says you've got to make a record on this issue.

[37] THE COURT: What do you want me to do? Ask him on the record in front of the panel?

MR. SMITH: Judge, all we have to do is take a seat and wait until the jury is selected.

THE COURT: There's a couple of folks on that panel that you can't tell. Are you going to ask them?

MR. SMITH: Here's my suggestion, you seat 13, if there is some seated, then we don't have any problem, we forget about it. If there aren't, then you can go ahead and send for lunch and I don't have any problem with that at all. At that point, I'm not going to make my objection and ask Mr. Gutmann to state for the record why he struck who he struck.

THE COURT: It will taint their future service as jurors. Okay. Let's see if we've got any problems.

THE CLERK: I'm ready.

THE COURT: Okay, go ahead.

(WHEREUPON, the Clerk called 13 jurors to try this case and Court continued as follows:)

THE COURT: Okay. Get me the two strike sheets.

(WHEREUPON, the Court called the names of the people who had been struck and Court continued as follows:)

THE COURT: Okay. You folks are excused. We may see you during pendency of your terms. Thank you very much. I'm going to swear the Jury and then we'll [38] break for lunch.

(WHEREUPON, THE jury panel was placed under oath and recessed for lunch and the following motions were had out of the hearing of the jury:)

THE COURT: Okay. Let's go on the record. Okay, in view of Mr. Smith's comments, as I called the roll of the struck jurors, I find that the defense struck, Patricia Ballard, 146, white; Mary Miller, 186, white; Opal Moore, 34, white; Charles Mattingly, 168, white; Richard Dolan, 21, white; Roger Blackburn, 180, white; Richard Atkinson, 86, white; Oliva Williams, 177, black; Neal McWaters, 211, white. And that the Commonwealth struck: Robert

Givens, 202, black; William Payne, 210, black; Glen Taylor, 53, white; a double strike for Mr. Atkinson, also by the Commonwealth, white; Gerry Young, 204, black; and another double strike, Olivia Williams, 137, black. What says the defendant now, sir?

MR. SMITH: Judge, we'll renew our motion and I'll state for the record. . .

THE COURT: Renew your motion for what, please, sir?

MR. SMITH: Well, specifically, we're moving that the Court discharge this panel and we start over again based on my client's rights to a fair cross section of the community. For the record, no black is seated, the defense struck one black person, the reasons are not only the victim but the defendant in the burglary in chief, as to their particular reasons, on the record, as to their striking of the five members of the race of the defendant and that's our motion.

THE COURT: Mr. Gutmann?

[39] MR. GUTMANN: Your Honor, I would, at . . . I would like the record to reflect that Mr. Smith did strike one black and 8 whites. I did not strike all the blacks from the jury. Is the Court requesting that I state on the record why I struck each person?

THE COURT: No, I'm not going to request that. Does the case law state that he has to state affirmatively why he struck as opposed to negatively that he struck not because of race?

MR. SMITH: I think he has to and if the Court wants to do this. . .

THE COURT: Do you want to show me the authority for that?

MR. SMITH: . . . if the Court wants to do this, we can break for lunch and then I'll bring some case law.

THE COURT: Do you want to go with it right now and state your reasons right now?

MR. GUTMANN: Well, your Honor, you know, I don't feel that that's my obligation for the same reason that Mr. Smith is not required to state why he struck certain people. I mean, I struck a young white male for the same reason I struck a young black male . . . a young black female and that's because they're young and studies have shown that they are less law and order citizens. You know, I obviously don't want jurors in the same age category as Mr. Griffith, that's one of my primary considerations and I struck Mr. Atkinson due to his occupation, a liberal occupation being an art director.

THE COURT: Okay. Objection denied subject to case law. You may show me when we return.

[40] MR. SMITH: Okay. I assume that this Court is not going to require our motion to be specific as to the blacks that were struck.

THE COURT: Not unless you have some case law. Court is adjourned.

(WHEREUPON, Court recessed for lunch and the following discussion was had before the jury returned to the court room:)

MR. SMITH: Is the Court going to rule on our motion?

THE COURT: Motion denied.

MR. SMITH: Is the Court overruling our motion . . . denying our motion for the Commonwealth to be specific as to the reasons the black members were struck from the panel?

THE COURT: Well, you said you had some authority.

MR. SMITH: Well, my moiton, irregardless, but, in fact, I will try to get some.

THE COURT: Motion denied, irregardless, subject to renewal if you have case law, okay?

MR. GUTMANN: Thank you.

MR. SMITH: Okay. Judge, for the record, I'll renew my prior motion for discharging this panel and starting over. I think my client's rights according to the Federal Constitution sixth and fourteenth amendments state Section 7 and 1 to a fair cross section of the community has been violated. There are three . . . I have been able to obtain, the case of the People v. Hall, 1983, it's in the 34th criminal law reporter, 2259 and that's in 1984, where it says, People v. Wheeler which is 22 Cal3r, [41] 263 and case it recites is 573, second 481968, and then there's a Massachusetts case Commonwealth versus S-o-a-r-e-s, 377 Mass 461, recites 389 ne 2nd 499, 1979 case. It's a New Mexico case, C-r-e-s-p-in, 94 New Mexico, 486, and the rest of the cite 612, one Federal case MacCray, M-a-c C-r-a-y versus A-b-r-a-m-s, out of the eastern district of New York, 1983, 34 criminal law reporter, 2441984, preemptories cannot be exercised solely on the basis of race and as the Court knows, the defendant in this case is black and the two alleged victims are white, they are not black. There are no blacks sitting on this jury and the Court has to find out how the preemptories were exercised and the defense counsel does not have to state it because this is a different situation for the defendant.

THE COURT: Let me ask you something before you go on. Are you aware of the fact that the Commonwealth did not strike all blacks. There was at least one who was not chosen merely by random selection of the Clerk?

MR. SMITH: I'm aware of that, your Honor. And, I'm aware that the Court was going to put that

information into the record when we got back from lunch.

THE COURT: Okay.

MR. SMITH: I believe there were at least three, three out of six that were black and that left one and I don't think a token black situation can cure it. For the record, I'd ask the Court to discharge this jury or at least make Mr. Gutmann put in the record the specifics at least as to each one.

[42] THE COURT: Okay. Both motions denied. Okay.

MR. GUTMANN: Thank you, Judge.

MR. SMITH: Thank you.

THE COURT: Okay, let's have the jury, sir.

(WHEREUPON, that concludes the discussion at the bench out of the hearing of the Jury and also completes the voir dire and motion portion of this transcript.)

Rendered: June 13, 1985

SUPREME COURT OF KENTUCKY

84-SC-1001-MR

RANDALL LAMONT GRIFFITH, APPELLANT

v.

COMMONWEALTH OF KENTUCKY, APPELLEE

Appeal from Jefferson Circuit Court
Honorable Ken G. Corey, Judge
82-CR-1449

MEMORANDUM OPINION OF THE COURT AFFIRMING

Randall Lamont Griffith was convicted of first-degree robbery and as a second-degree persistent felony offender. He was sentenced to a term of twenty years' imprisonment. We affirm.

Griffith asserts that the commonwealth improperly struck blacks from the jury that tried him. The Commonwealth peremptorily excused four blacks and two whites. One black was excused by random selection by the clerk.

Griffith, a black, insists the Commonwealth must explain why peremptories were exercised against blacks. The Commonwealth's attorney denied race as a reason for striking, and the trial court declined to discharge the jury. *Swain v. Alabama*, 380 U.S. 202, 85 S.Ct. 824, 13 L.Ed.

2d 759 (1965), held that the striking of all blacks from a jury panel in a particular case is not a denial of equal protection. We are of the opinion *Swain* disposes of this issue, and we decline to go further than the *Swain* court.

Griffith next asserts that the trial court erroneously permitted witnesses for the prosecution to testify as to their identification of Griffith and in permitting police officer witnesses to also testify as to the witnesses' identification of Griffith. We have examined the authorities cited and conclude this testimony was not erroneously admitted.

The judgment is affirmed.

All concur.

SUPREME COURT OF THE UNITED STATES

No. 85-5221

RANDALL LAMONT GRIFFITH, PETITIONER

v.

KENTUCKY

ON PETITION FOR WRIT OF CERTIORARI TO THE
SUPREME COURT OF THE STATE OF KENTUCKY

ON CONSIDERATION of the motion for leave to proceed herein *in forma pauperis* and of the petition for writ of certiorari, it is ordered by this Court that the motion to proceed *in forma pauperis* be, and the same is hereby, granted; and that the petition for writ of certiorari be, and the same is hereby, granted limited to the following question: In cases pending on direct appeal, should the holding in *Batson v. Kentucky*, 476 U.S. — (1986), be given retroactive effect? The case is set for oral argument in tandem with case No. 85-5221, *Griffith v. Kentucky*.

June 2, 1986